IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Civil Appellate Jurisdiction

Second Appeal No. 28 of 2006
with
Civil Application No.46 of 2006

1. Shri Pandurang Raghu Pawar
since deceased by his heirs
A.Shri Nanaso Pandurang Pawar ..Appellant

vs.

1. Sou.Anandibai Bandu Jadhav
and others ..Respondents

Mr.U.B.Nighot for appellant.
Mr.Pratap Patil for respondent nos.1B to 1D and 2.

CORAM: S.C.DHARMADHIKARI J
27th September,2007

P.C.

1. Pursuant to the order passed on the last occasion, parties have tendered the consent terms. By consent name of respondent no.3 Smt.Shrimati Pandurang Pawar stands deleted.

2. The consent terms are between the appellant and respondent nos.1B to 1E and respondent no.2. The power of attorney holder of the appellant is present in Court so also respondent nos.1B to 1E and 2. In this matter the Trial Court decreed the suit which was preferred by Anandibai Bandu Jadhav (original plaintiff) by holding that she has 1/3rd share in the suit property and defendant no.2 to the suit, namely, respondent no.2 herein is

entitled to 1/2 share in the property. The partition was directed to be carried out accordingly. The partition was to be effected in respect of the suit properties which are more particularly described in clauses 1 and 2 of the consent terms.

3. In appeal, which was preferred against the judgment and decree of the Trial Court, the lower Appellate Court has dismissed the appeal and confirmed the decree in Reg.Civil Suit No.247 of 1988.

4. During the pendency of the second appeal, parties have negotiated for over all settlement. They being the family members have further resolved that all disputes be put to an end finally to the satisfaction of the family members so also to avoid any future litigation. Accordingly, they agreed to modify the decree passed by the Trial Court and confirmed by the Appellate Court in terms of the consent terms which are duly signed by them. The consent terms with all its implications and consequences were explained to them in their language by the learned Advocates appearing for the appellant as also for respondent nos.1B to 1E and 2. The consent terms are read over and explained

to even the power of attorney holders. The parties as also their power of attorney holders have confirmed the arrangement arrived at. They do not dispute that the same is in conformity with the discussion and negotiations till date. I am satisfied that in the light of the agreement arrived at by the parties to put an end to all family disputes, it would be just, fair and proper to take the consent terms on record and modify the decree of the lower Appellate Court and Trial Court as per the same.

5. Clause 1 of the consent terms describes the land and properties which shall come to the share of respondent nos.1B to 1E and 2 (original plaintiff and defendant no.2 respectively). The appellant has given up all his right, title and interest therein and has agreed to hand over possession thereof. He also records his "no objection" to the revenue record being corrected and entries effected therein in terms of the agreement arrived at by the parties. In turn the properties described in clause 2 of the consent terms shall come to the exclusive share of the appellant. He is in possession thereof and agrees that he shall retain possession of the same. Therefore, respondent nos.1 B to 1E and respondent

no.2 give up their right, title and interest and claim towards the properties mentioned in clause 2.

6. The parties also record that all prior encumbrances with regard to the agricultural lands described in the consent terms more particularly clause 1 shall not bind respondent nos.1B to 1E and respondent no.2. The repayment of outstanding loan and clearance of encumbrances on the property shall be the sole responsibility of the appellant and he has agreed to take over the same. None of the transactions entered into by him would bind the respondents named above.

7. The respondents have agreed to give up their claim for mesne profit. It is in these circumstances that the consent terms tendered are taken on record and marked "X" for identification. That decree passed by the courts below stands modified and substituted leaving the parties to bear their own costs. The second appeal stands disposed of in terms of the consent terms accordingly. Civil Application no.46 of 2006 does not survive in the light of the disposal of the second appeal.

8. The questions of law, if any, gone into and

decided by the Trial Court and lower Appellate Court are left open for being adjudicated and considered in an appropriate case.

(S.C.DHARMADHIKARI J.)